



*Never Settle for Less.*

Roderick J. Fracassi  
Chief Counsel

November 20, 2014

Ms. Kathleen H. Johnson  
Director, Enforcement Division  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105  
Attn: Cyntia Steiner (ENF-2-1)

**VIA ELECTRONIC  
AND FIRST CLASS MAIL**

Re: Con-way Freight, Inc.  
California's Air Resource Board's *"Truck and Bus Regulation"*, ("CARB")

Dear Ms. Steiner:

In regard to the above referenced matter and in response to the request for information dated October 1, 2014 ("Second Request"), this correspondence and Statement of Certification will serve as Con-way Freight, Inc.'s ("Con-way") response thereto. If you have any questions or desire any additional information, please direct all future correspondences and communication directly to my attention as counsel for Con-way to the letterhead address and telephone number provided below.

#### **I. PRELIMINARY STATEMENT**

Con-way has provided documentation in support of its response electronically; including 3 excel spreadsheets identified by file name. Con-way Freight has made a substantial and meaningful effort to respond completely and accurately to the First and Second Requests. This effort involved substantial man-hours by several Con-way Freight employees, and the review of multiple data bases and hundreds of records.

Based on an agreement between Con-way's legal counsel, Catherine Johnson and EPA's counsel, Daniel Reich, Con-way Freight is submitting a partial response to the Second Request issued on October 1. Pursuant to the agreement, Con-way is submitting its response only to Questions 1-8 and Question 14.

In its June 19 response, Con-way interpreted request number 1 as referring only to those vehicles meeting the criteria set forth and currently active in Con-way's fleet at the time of the response. It was not until receipt of the Second Request, that Con-way considered that the EPA intended to have a broader response to include all vehicles active in Con-way's fleet during the period of January 1, 2012 to May 7, 2014.

In an abundance of caution, and in the unlikely event of any legal action resulting from this matter, Con-way Freight wishes to clarify that it does not waive any defenses available to it by providing this response, including, but not limited, to those identified below, and would like to make the following qualifications to both the enclosed response and to Con-way Freight's earlier June 19, 2014 response:

- Con-way Freight objects to the requests insofar as they seek privileged information, including any and all communications and documents that are protected from disclosure by either the attorney-client communication privilege or attorney work-product doctrine.
- Con-way Freight objects to the requests to the extent they improperly seek information beyond the scope of EPA's authority under Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a).
- Con-way Freight objects to the requests to the extent they are vague, ambiguous, overbroad, and unduly burdensome in their scope and definitions.
- Con-way Freight objects to the requests to the extent that they are unreasonable or otherwise not a proper exercise of EPA's information-gathering authority under Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a).
- Con-way Freight objects to the requests to the extent that they seek to have Con-way Freight create records which are not otherwise required to be kept in the ordinary course of business, under the Clean Air Act or California's Truck and Bus Regulation and other State Implementation Plans.
- Con-way Freight reserves the right, but not the obligation, to supplement and revise its response, and reserves the right to assert additional objections as it continues to evaluate its response.
- Con-way Freight reserves the right to request confidential treatment for the documents and information designated as "confidential business information" ("CBI") to the extent information in the files and documents are designated confidential either in this response or at a later point.

Finally, Con-way Freight also notes that on several occasions, it was uncertain about the specific meaning of undefined terms used in the First and Second Requests. Con-way Freight interpreted undefined terms in EPA's requests in a manner generally consistent with Con-way Freight internal practices and standard industry usage – and in some occasions affirmatively sought guidance from EPA or the California Air Resource Board or both.

Accordingly, notwithstanding the foregoing, and without waiving any of the foregoing qualifications and objections, Con-way Freight has included the relevant numbered request followed by Con-way Freight's response enclosed. The numbers of the responses correspond to the numbers of the specific request included in the Second Request (except as noted to apply to the First Request).

## II. SPECIFIC RESPONSES

**Amended June 19, 2014 Response** - In its amended response to the request of May 7, 2014 issued by the EPA, Con-way Freight has identified 525 diesel-fueled vehicles driven in California between January 1, 2012 and June 19, 2014. Enclosed on the disk, file name, ***Amended response Q1 11-20-14 (2).xlsx***, is a spreadsheet containing information on the 525 tractors.

The units include the 29 units originally identified in its June 19 response and are shaded in blue. Again, Con-way construed the regulation of fleet to include those vehicles based in California. The rows shaded in yellow are tractors that were active in Con-way's fleet as of June, but were not included in the original response since the tractors are not based in California. The remainder of the units were not included in the original response since they were not active in Con-way's fleet at the time of our original response. In order to provide further clarification, here is a brief description of the columns:

- A. The state issuing the license plate for the unit;
- B. The license plate number of the unit;
- C. Vehicle Identification Number of the unit;
- D. Engine Model Year;
- E. Engine Family;
- F. The Con-way internal site code for the service center where the unit is based;
- G. The street address of the service center;
- H. The City and State of the service center;
- I. The zip code of the service center;
- J. The name of the contact person at the service center;
- K. The telephone number for the contact at the service center;
- L. Y/N determination of whether or not the unit is currently based in California;
- M. Y/N determination if whether or not the unit drives into California;

- N. Y/N determination of whether or not routine maintenance is performed on the unit in California;
- O. Date that the unit was first utilized in California;
- P. Date that the unit stopped driving in California, but continued to be part of the Con-way fleet;
- Q. Date that the unit was either sold or scrapped;
- R. Total miles driven in California in 2012;
- S. Total miles driven in California in 2013;
- T. Total number of miles driven in California from January 1, 2014 through October 1, 2014;
- U. Y/N determination on whether or not the unit is a drayage truck; and,
- V. Whether or not the unit is still active in the Con-way fleet.

**Second Request, Request #1** - In response to Request # 1, enclosed on the disk, file name, *EPA Response 112014 Q1-7.xlsx*, is a spreadsheet containing information on 1474 tractors, including 329 units which were registered in California between January 1, 2012 and October 1, 2014. Column C indicates the state of registration for the units.

**Second Request, Request #2** – In response to Request #2, Con-way has identified 6 tractors that were registered in California and not reported to TRUCRS as of October 1, 2014. For your convenience, these units have been shaded in yellow.

**Second Request, Request #3** - In response to Request #3, see a detailed explanation on all of the units omitted from TRUCRS in Con-way's response to Request #6 below.

**Second Request, Request #4** – In response to Request #4, enclosed on the disk, file name, *EPA Response 112014 Q1-7.xlsx*, is a spreadsheet containing information on 1,474 tractors, including 1,145 tractors which were not registered in California but driven a minimum of 1 mile in California between January 1, 2012 and October 1, 2014. Column C indicates the state of registration for the units.

**Second Request, Request #5** – In response to Request #5, Con-way has identified 220 tractors that were not reported to TRUCRS as of October 1, 2014. For your convenience, these units have been shaded in yellow.

**Second Request, Request #6** - In response to Request #6, Con-way has identified various reasons why the units identified above were not reported to TRUCRS. The majority of omissions, approximately 160 units were operated in the State of California for the sole purpose of satisfying the International Registration Plan (IRP) which requires that a tractor must cross state lines at least once per year. These units can be identified on the spreadsheet as showing very few miles in California (usually less than 100 miles per year) compared to the overall mileage for these units. These moves were managed directly between Con-way's licensing department in Portland and the service center manager at the location where the tractor was domiciled. Since these moves were not reported up to the operations group based in Ann Arbor, Michigan, the team managing data input for TRUCRS had no visibility that these vehicles were entering California. Now that Con-way has identified this gap, we plan to work with CARB to see what options may be available under the exemption provisions in Section 2025(p) of the California Code of Regulations.

The second largest group of vehicles omitted, approximately 50 units were moved into California for the sole purpose of staging these tractors at the location receiving a new tractor. On December 21, 2012, Con-way took delivery of 140 Freightliner tractors with the most advanced emission reducing engines available. As part of that transaction, Con-way moved some out of state tractors into California in anticipation of taking delivery of these new tractors. These units can be identified on the spreadsheet as showing minimal California miles in 2012, and no miles in 2013 and 2014. Due to the volume of tractors moving in and out of Con-way's fleet at one time and the fact that these tractors were not based in California, the input of these old tractors into TRUCRS was overlooked. The volume of tractors associated with this transaction makes it a unique event and should not be considered an ongoing concern.

The final group of approximately 10 units is tractors that are domiciled outside of California but were put into service in California to alleviate an operational need caused by either a spike in shipping volume

or a replacement for another tractor experiencing a mechanical failure. Since these are unexpected and non-recurring situations they were not properly reported from the individual service centers to the department in Ann Arbor responsible for entering the data into TRUCRS.

**Second Request, Request #7** - Request #7 seeks information on only the 226 vehicles highlighted in yellow on the enclosed disk, file name, *EPA Response 112014 Q1-7.xlsx*. However, in Con-way's attempt to be transparent as possible, we have provided the following information on all 1474 tractors.

- 7 a) – Column A, VIN
- 7 b) – Column C, Registration State
- 7 c) – Column B, License Plate
- 7 d) – Column H, Engine Model Year
- 7 e) – Column F, Engine Family
- 7 f) – Column J, Current Dom (site addresses are in column W – Z)
- 7 g) – Column E, DPF Filter
- 7 h) – Column D, Date in Service
- 7 i) – Columns I (M5 Status) and Column V (Sidelines / Leave CA date)

**Second Request, Request #8** - In response to Request #8 enclosed on the disk, file name, *EPA Response 112014 Q1-7.xlsx*, is a spreadsheet containing information on the 1474 tractors, including each vehicle with an engine model year prior to 2007 in which Con-way has indicated in Column E that the vehicle does not have a Diesel Particulate Filter.

- 8 a) – Column A, VIN
- 8 b)i) – Column O
- 8 b)ii) – Column Q
- 8 b)iii) – Column S
- 8 c) – Con-way is unable to provide total days of operation.

**Second Request, Request #14** - In response to Request #14 enclosed on the disk, file name *EPA Response 112014 Q14.xlsx* are two (2) spreadsheets providing a response to Request 14a and 14b.

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Again, due to the volume of vehicles and documents sought by the EPA, Con-way believes that it would be most beneficial to allow Con-way representatives to meet with representatives of CARB and the EPA to review Con-way's submittal, its business model, its record keeping processes and the efforts expended by Con-way to comply with the applicable regulations.

If you have any questions or, require any additional explanation or documentation please contact me at the letterhead telephone number or email address provided.

Respectfully,

A handwritten signature in blue ink, consisting of stylized initials 'RJF' followed by a horizontal line.

Roderick J. Fracassi

Enclosure

Cc: Catherine W. Johnson, Esq.